

AMENDED IN ASSEMBLY APRIL 5, 2011
AMENDED IN ASSEMBLY MARCH 17, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 604

Introduced by Assembly Member Skinner
(Coauthor: Assembly Member Blumenfield)

February 16, 2011

An act to amend Sections 121349, 121349.1, 121349.2, and 121349.3 of the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 604, as amended, Skinner. Needle exchange programs.

Existing law, with certain exceptions, makes it a misdemeanor for a person to deliver, furnish, *or* transfer, *or* possess with intent to deliver, furnish, or transfer, ~~or manufacture with the intent to deliver, furnish, or transfer,~~ drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to ~~plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale,~~ *or otherwise* introduce into the human body a controlled substance. Existing law provides an exception to this general rule by authorizing a city, county, or city and county to conduct a clean needle and syringe exchange project authorized by the public entity to combat the spread of HIV and bloodborne hepatitis. Existing law exempts providers participating in an exchange project from criminal prosecution for possession of needles or syringes during participation in the project. Existing law also provides a specified annual comment and reporting process relating to the needle and syringe exchange projects.

This bill would authorize the State Department of Public Health to authorize, as specified, certain entities to provide hypodermic needle and syringe exchange services in any location where the department determines that the conditions exist for the rapid spread of HIV, viral hepatitis, or any other potentially deadly or disabling infections that are spread through the sharing of used hypodermic needles and syringes. *The bill would require the department to establish and maintain on its Internet Web site the address and contact information of these programs.*

This bill would exempt staff and volunteers participating in an authorized exchange project from criminal prosecution for violation of any law related to the possession, furnishing, or transfer of hypodermic needles or syringes during participation in an exchange project and would exempt program participants from criminal prosecution for possession of needles and syringes acquired from an authorized exchange project entity. The bill would also make the comment and reporting process for the projects biennial.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 121349 of the Health and Safety Code
- 2 is amended to read:
- 3 121349. (a) The Legislature finds and declares that scientific
- 4 data from needle exchange programs in the United States and in
- 5 Europe have shown that the exchange of used hypodermic needles
- 6 and syringes for clean hypodermic needles and syringes does not
- 7 increase drug use in the population, can serve as an important
- 8 bridge to treatment and recovery from drug abuse, and can curtail
- 9 the spread of human immunodeficiency virus (HIV) infection
- 10 among the intravenous drug user population.
- 11 (b) In order to reduce the spread of HIV infection and
- 12 bloodborne hepatitis among the intravenous drug user population
- 13 within California, the Legislature hereby authorizes a clean needle
- 14 and syringe exchange project pursuant to this chapter in any city,
- 15 county, or city and county upon the action of a county board of
- 16 supervisors and the local health officer or health commission of
- 17 that county, or upon the action of the city council, the mayor, and
- 18 the local health officer of a city with a health department, or upon

1 the action of the city council and the mayor of a city without a
2 health department.

3 (c) In order to reduce the spread of HIV infection, viral hepatitis,
4 and other potentially deadly bloodborne infections, the State
5 Department of Public Health may, notwithstanding any other law,
6 authorize entities that provide services set forth in paragraph (1)
7 of subdivision (d), and that have sufficient staff and capacity to
8 provide the services described in Section 121349.1, as determined
9 by the department, to apply for authorization under this chapter to
10 provide hypodermic needle and syringe exchange services
11 consistent with state and federal standards, including those of the
12 United States Public Health Service, in any location where the
13 department determines that the conditions exist for the rapid spread
14 of HIV, viral hepatitis, or any other potentially deadly or disabling
15 infections that are spread through the sharing of used hypodermic
16 needles and syringes.

17 (d) In order for an entity to be authorized to conduct a project
18 pursuant to this chapter, its application to the department shall
19 demonstrate that the entity complies with all of the following
20 minimum standards:

21 (1) The entity provides, directly or through referral, ~~any~~ all of
22 the following services:

- 23 (A) Drug abuse treatment services.
- 24 (B) HIV or hepatitis-C screening.
- 25 (C) Hepatitis A and hepatitis B vaccination.
- 26 (D) Screening for sexually transmitted infections.
- 27 (E) Housing services for the homeless, for victims of domestic
28 violence, or other similar housing services.
- 29 (F) Services related to provision of education and materials for
30 the reduction of sexual risk behaviors, including, but not limited
31 to, the distribution of condoms.

32 (2) The entity has the capacity to commence needle and syringe
33 exchange services within three months of authorization.

34 (3) The entity has adequate funding to do all of the following
35 at reasonably projected program participation levels:

- 36 (A) Provide needles and syringe exchange services for all of its
37 participants.
- 38 (B) Provide HIV and viral hepatitis prevention education
39 services for all of its participants.

1 (C) Provide for the safe recovery and disposal of used syringes
2 and sharps waste from all of its participants.

3 (4) The entity has the capacity, and an established plan, to collect
4 evaluative data in order to assess program impact, including, but
5 not limited to, all of the following:

6 (A) The total number of persons served.

7 (B) The total number of syringes and needles distributed,
8 recovered, and disposed of.

9 (C) The total numbers and types of referrals to drug treatment
10 and other services.

11 (5) If the application is provisionally deemed appropriate by
12 the department, the department shall, at least 45 days prior to
13 approval of the application, provide for a period of public comment
14 as follows:

15 (A) Post on the department’s Internet Web site the name of the
16 applicant, the nature of the services, and the location where the
17 applying entity will provide the services.

18 (B) Send a written and an ~~electronic mail~~ *e-mail* notice to the
19 local health officer of the affected jurisdiction.

20 (e) The department shall establish and maintain on its Internet
21 Web site the address and contact information of programs
22 providing hypodermic needle and syringe exchange services
23 *pursuant to this chapter*.

24 (f) The authorization provided under this section shall only be
25 for a clean needle and syringe exchange project as described in
26 Section 121349.1.

27 SEC. 2. Section 121349.1 of the Health and Safety Code is
28 amended to read:

29 121349.1. The State Department of Public Health or a city,
30 county, or a city and county with or without a health department,
31 that acts to authorize a clean needle and syringe exchange project
32 pursuant to this chapter shall, in consultation with the State
33 Department of Public Health, authorize the exchange of clean
34 hypodermic needles and syringes, as recommended by the United
35 States Public Health Service, subject to the availability of funding,
36 as part of a network of comprehensive services, including treatment
37 services, to combat the spread of HIV and bloodborne hepatitis
38 infection among injection drug users. Staff and volunteers
39 participating in an exchange project authorized by the state, county,
40 city, or city and county pursuant to this chapter shall not be subject

1 to criminal prosecution for violation of any law related to the
2 possession, furnishing, or transfer of hypodermic needles or
3 syringes during participation in an exchange project. Program
4 participants shall not be subject to criminal prosecution for
5 possession of needles or syringes acquired from an authorized
6 needle and syringe exchange project entity.

7 SEC. 3. Section 121349.2 of the Health and Safety Code is
8 amended to read:

9 121349.2. Local government, local health officials, and law
10 enforcement shall be given the opportunity to comment on clean
11 needle and syringe exchange programs on a biennial basis. The
12 public shall be given the opportunity to provide input to local
13 leaders to ensure that any potential adverse impacts on the public
14 welfare of clean needle and syringe exchange programs are
15 addressed and mitigated.

16 SEC. 4. Section 121349.3 of the Health and Safety Code is
17 amended to read:

18 121349.3. The health officer of the participating jurisdiction
19 shall present biennially at an open meeting of the board of
20 supervisors or city council a report detailing the status of clean
21 needle and syringe exchange programs, including, but not limited
22 to, relevant statistics on bloodborne infections associated with
23 needle sharing activity and the use of public funds for these
24 programs. Law enforcement, administrators of alcohol and drug
25 treatment programs, other stakeholders, and the public shall be
26 afforded ample opportunity to comment at this biennial meeting.
27 The notice to the public shall be sufficient to ~~assure~~ *ensure*
28 adequate participation in the meeting by the public. This meeting
29 shall be noticed in accordance with all state and local open meeting
30 laws and ordinances, and as local officials deem appropriate. For
31 hypodermic needle and syringe exchange services authorized by
32 the State Department of Public Health, a biennial report shall be
33 provided by the department to the local health officer based on the
34 reports to the department from service providers within the
35 jurisdiction of that local health officer.